

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

ROBERT ROMAYA and BASIMA ROMAYA,

Plaintiffs/Counter-Defendants,

vs.

Case No. 2004-5353-CZ

DAVID JACOB HALMAN and
RON KASSHAMOUN,

Defendants,

and

RON KASSHAMOUN and KAY KASSHAMOUN,

Counter-Plaintiffs,

vs.

ROBERT ROMAYA and BASIMA ROMAYA,

Counter-Defendants.

OPINION AND ORDER

Plaintiffs moved to dismiss defendants' (Kasshamouns) counter-complaint under MCR 2.116(C)(8), failure to comply with discovery under MCR 2.313 and for sanctions under MCR 2.114, MCL 600.2591. In response, Kasshamouns moved for summary disposition of plaintiffs' complaint pursuant to MCR 2.116(C)(10).

In the interests of judicial economy, the Court incorporates by reference the statement of facts as set forth in its Opinion and Order issued March 2, 2006.



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Standard of Review

A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim. A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5). *Maiden v. Rozwood* 461 Mich 109, 119-120; 597 N.W.2d 817 (1999). However, a mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action. *Churella v Pioneer State Mutual Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003).

When deciding a motion under MCR 2.116(C)(8), the court must give the party an opportunity to amend unless the amendment would be futile. *Lane v KinderCare Learning Centers Inc*, 231 Mich App 689, 696; 588 NW2d 715 (1998).

A motion brought under MCR 2.116(C)(10) challenges the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition of all or part of a claim or defense may be granted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10); *Klein v Kik*, 264 Mich App 682, 685; 692 NW2d 854 (2005). The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists, and the disputed factual issue must be material to the dispositive legal claims. *State Farm v Johnson*, 187 Mich

App 264, 267; 466 NW2d 287 (1990). The Court must consider all pleadings, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party. *Corley, supra* at 278. The Court is liberal in finding a genuine issue of material fact. *Marlo Beauty Supply Inc v Farmers Ins Group*, 227 Mich App 309, 320; 575 NW2d 324 (1998). The Court may not make findings of fact or weigh credibility in deciding a summary disposition motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Thus, when the truth of a material factual assertion depends on credibility, a genuine factual issue exists and summary disposition may not be granted. *Metropolitan Life Ins Co v Reist*, 167 Mich App 112, 121; 421 NW2d 592 (1988).

Discussion

Plaintiffs state that Kasshamouns' counter-complaint fails to state with particularity alleged facts in support of their claims. A review of the counter-complaint confirms plaintiffs' contentions. Kasshamouns merely recited conclusory statements without factual support. For instance, Count I claims counter-defendants failed to perform pursuant to the contract by retaining plaintiffs' money instead of purchasing property that Kasshamouns allege did not exist, thus, the whole scheme was a fraud. Kassamouns gave no specific factual allegations in support of their contentions that plaintiffs' perpetrated a fraud upon them. In Count II, Kassamouns state plaintiffs made false representations of material facts, but failed to specify what the false representations consisted of. Similarly, Kassamouns failed to state with particularity what negligently false representations were made in Count III. In Count VI, Kassamouns claim plaintiffs communicated to other persons in the community that Kassamouns defrauded them and otherwise engaged in improper and illegal actions. Likewise, there are no factual allegations in support.

The Court is convinced that Kassamouns' counter-complaint is flawed such that it is unacceptable as it now stands; however, under MCR 2.116(C)(8), the Court must give the parties an opportunity to amend. To this end, the Court will grant Kassamouns' 30 days from the date of the issuance of this Opinion and Order to file a proper, amended complaint.

Next, plaintiffs state that Kassamouns' counter-complaint must be dismissed for failure to comply with the Court's discovery order issued September 19, 2005. In response, Kassamouns disagree with this allegation, stating they have fully complied with discovery. Kassamouns have attached correspondence sent by certified mail to attorney Miller requesting any and all documents pertaining to their bankruptcy action. Other correspondence to attorney John Williams, dated September 19, 2005, indicated the enclosure of Kassamouns' tax returns for the years 2001 and 2004, but as they had yet to file for the years 2002 and 2003, there was clearly nothing available to submit. Moreover, attorney Yaldo had received checking account statements for Mr. Halman's account for the months of February, March and April of 2000, and suggested that if Mr. Williams required a copy of those, he should forward a check to cover copy expenses.

Based on the above, it does not appear that Kassamouns' have deliberately withheld information sought by plaintiffs, and although have not been entirely diligent in following up on the requests made, the Court is not convinced that Kassamouns merit the imposition of sanctions, dismissal or the entry of a default judgment. However, the Court recommends that Kasshamouns diligently move to complete the discovery requests within the next 30 days.

With respect to Kasshamoun's request for summary disposition under MCR 2.116(C)(10), following a thorough review of the record demonstrates myriad genuine issues of material fact such that the Court cannot appropriately grant Kasshamoun's request.

For the above-stated reasons, plaintiffs' motion to dismiss Kasshamouns' counter-complaint, and for sanctions, is DENIED. Further, Kasshamouns' counter-motion for the dismissal of plaintiffs' complaint is also DENIED. Pursuant to MCR 2.602(A)(3), the Court states this case remains OPEN as all matters have yet to be resolved.

IT IS SO ORDERED.

JMB/kmv

DATED: _____

MAY 24 2006

cc: John P. Williams, Attorney at Law

Scott S. Yaldo, Attorney at Law



JAMES M. BERNAT, Circuit Judge